

JESS E. MINIUM, JR.

IBLA 81-26

Decided April 17, 1981

Appeal from the decision of the Oregon State Office, Bureau of Land Management, declaring mining claim OR MC 8488 abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1979, or the claims will be conclusively deemed to have been abandoned.

APPEARANCES: Jess E. Minium, Jr., Esq., pro se.

OPINION BY ACTING ADMINISTRATIVE JUDGE GRANT

Jess E. Minium, Jr., has appealed the decision of the Oregon State Office, Bureau of Land Management (BLM), dated August 27, 1980, declaring the Sweeden #2 mining claim, OR MC 8488, abandoned and void for failure to file evidence of assessment work or a notice of intention to hold the claim for 1979 on or before December 30, 1979.

In his statement of reasons, appellant urges that a claim which has been filed upon cannot be considered abandoned as a matter of law. He states that he performed the assessment work and any failure to file

was an oversight and should be excused. He asserts that the filing of an affidavit of assessment work is merely ministerial and failure to do so cannot void the claim when the assessment work has been done. He alleges that he is actively working the claim and has attempted to comply with the law.

[1] Under section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a), and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located after October 21, 1976, is required to file either evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the claim, on or before December 30 of each calendar year following the calendar year in which the claim was located. Failure to file such instruments within the prescribed time period is conclusively deemed to constitute an abandonment of the claim under section 314(c) of FLPMA, and the claim is properly declared void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4; Silvertip Exploration & Mining, 43 IBLA 250 (1979); Juan Munoz, 39 IBLA 72 (1979); Donald H. Little, 37 IBLA 1 (1978).

Appellant located his claim on September 30, 1978, and timely filed a copy of his notice of location with BLM on October 3, 1978. Therefore, he was required to file either evidence of assessment work or a notice of intention to hold the claim with BLM on or before December 30, 1979, the calendar year following the calendar year in which the claim was located. Appellant did not do so. Accordingly, BLM properly declared the claim abandoned and void.

Appellant's assertions are incorrect. FLPMA requires both the filing of a copy of the notice of location for a claim and the annual filing of evidence of assessment work or a notice of intention to hold the claim. The consequence of failure to do either is abandonment. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by statute itself. The Secretary of the Interior has no authority to waive compliance with the statute or to afford claimant any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. __ (1981).

The responsibility for complying with the requirements of FLPMA rested with appellant. On October 20, 1980, the Board received from appellant a copy of a notice of intention to resume mining operations on the Sweeden #2 claim which had been recorded on October 15, 1979, in the records of Skamania County, Washington. However, the Board has no authority to accept this late filing or excuse lack of compliance with the statutory requirements. Lynn Keith, *supra*; Peter and Rinda Hassen, 51 IBLA 17, 18 (1980); Glen J. McCrorey, 46 IBLA 355 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Acting Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

